STATE OF MICHIGAN

COURT OF APPEALS

ALLEN LANGFORD, as Next Friend for PATRINA LANGFORD, a Minor,

Plaintiff,

v

JENKINS CONSTRUCTION, INC., TMP ASSOCIATES, GEORGE COHEN, DETROIT PUBLIC SCHOOLS, CASS TECHNICAL HIGH SCHOOL, DETROIT PUBLIC SCHOOLS PROGRAM MANAGER, L.L.C, QUICK GREEN, B & L LANDSCAPING, and BECKETT & RAEDER, INC.,

Defendants

and

ABC PAVING COMPANY, INC.,

Defendant/Third-Party Plaintiff-Appellant/Cross-Appellee,

and

INDUSTRIAL FENCE & LANDSCAPE,

Third-Party Defendants-Appellee/Cross-Appellant

.

UNPUBLISHED
June 23, 2009

No. 285915
Wayne Circuit Court
LC No. 06-604007-NO

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

SHAPIRO, J. (*concurring*).

I concur in the reversal of summary disposition and in the order of remand. I write to clarify what matters I believe must be resolved by the finder of fact on remand. The lead opinion suggests that ABC need merely show that that "Quick Green did perform acts or services in

furtherance of the sod installation" and that a satisfactory showing on that narrow issue will be "sufficient for implementation of the indemnification provision." I believe that a broader question must be answered by the fact-finder on remand, namely the issue actually posed by the language of the contract, i.e., whether the cause of the underlying plaintiff's injury "[arose] out of any of [Industrial's] work, materials, supplies, subcontracts, employees or any other source."

I agree with the majority's recitation of the law governing the interpretation of indemnification agreements and that "the extent of the duty must be determined from the language of the contract." *Grand Trunk Western R, Inc v Auto Warehousing Co*, 262 Mich App 345, 353; 686 NW2d 756 (2004). Given the language of this indemnification agreement, it can be triggered in the absence of any negligence by Industrial or any subcontractor it hires. However, the agreement is not triggered unless the underlying claim of injury arose out of the scope of work Industrial was hired to do, which the contract sets forth as: "furnish and install sod per plans and specifications". I find no determination by the trial court that the injury arose out of the furnishing or installation of the sod. Further, it is difficult to see how this can be determined without the taking of evidence by a fact-finder given that the record contains evidence that the injury was caused by degeneration of the field resulting from the type of topsoil used by ABC before the sod was placed and not as a result of the furnishing or installation of the sod.

If, in fact, the injury arose out of the "furnish[ing] or install[ation of] the sod per plans and specifications", then regardless of whether it was done negligently and regardless whether it was done by Industrial, its sub-contractor Quick Green or by Quick Green's sub-contractor B & L Landscaping, Industrial must indemnify ABC. However, if the injury did not arise out of the furnishing or the installation of the sod then the indemnification clause is not triggered. Accordingly, I would direct that the finder of fact make that determination upon remand.

/s/ Douglas B. Shapiro